

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE**

PRESENT

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT PETITION NO.20117 of 1993

Between:

1. Indian National Trust for Art and Cultural Heritage,
A.P. State Chapter rep. by the Convenor, Sri Shravan Kumar, formerly Chief
Secretary, Govt. of A.P. S/o Anjani Prasad, aged 63 years, 7-1-216/1
Ameerpet, Hyderabad.
2. Indian National Trust For Art and Cultural Heritage, East Godavari district
Chapter, rep. by Co-convenor, Sri K.Bhaskara Rao, S/o Venkata Krishnaiah,
aged 70 years, resident of 2-9A-4, Venkatanagar, Kakinada – 533 003.

.... PETITIONERS

AND

1. State of A.P. rep. by the Chief Secretary to Govt., General Admn. Department,
Secretariat, Hyderabad.
2. Sri Rao Venkata Mahipati Ramaratna Rao,

S/o R.V.K.M.Suryarao, Fort, Pithapuram,

East Godavari district.
3. Kakinada Brahma Samaj
rep. By Dr. Seshibhushanam, S/o Suryaprakasham
R/o 2-24-7, Srinagar, Kakinada – 533 004.

(Now the cause title with regard to R-3 is amended as per court order dated 15-10-1998 in WPMP No.27252 of 1997)

4. A.P.Brahma Samaj, a Regd. Body rep. by the President,
Dr. G.Lakshmipathi, S/o Venkaiah, Retd. Professor, ENT,
Door No.1-8-700/11, Nallakunta, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other writ, order or direction of like nature a) to issue to the first respondent to exercise its statutory powers under Section 3 of the Commission of Inquiries Act (Act LX of 1953) and appoint a Commission of Inquiry for the purpose of conducting enquiry into the true character and nature of the building called Brahmopasana Mandir situated in Sri Rajarammohan Roy Road, Kakinada, East Godavari District and such a Commission of Inquiry should be constituted by the appointment of either a serving or a retired High Court Judge; b) to further direct the said Commission of Inquiry to make appropriate recommendations for the preservation and conservation of the said building; (c) to further direct the respondents not to interfere with the affairs of the building and keep it as an ancient monument.

Counsel for the Petitioners : Smt. V.Meenakshi

Counsel for the Respondent No.1 : Govt. Pleader for General Admn.

Counsel for the Respondent No.2 : Sri P.Krishna Reddy

Counsel for the Respondent No.3: Sri I.Satya Prasad Rao

Counsel for the Respondent No.4: Sri V.Ravinder Rao

The Court made the following :

ORAL ORDER: (Per Hon'ble the Chief Justice)

On 27th December, 1993, this writ petition was filed by Indian National Trust for Art and Cultural Heritage (INTACH), Andhra Pradesh State Chapter, represented by its Convenor. INTACH is an autonomous Non-Governmental organisation set up in 1984 and is registered under Societies Registration Act. It has number of Chapters spread over the entire country. Amongst other objectives, the Society has undertaken the activity of preservation and conservation of natural resources, cultural property including but not limited to places of scenic beauty and geological

features having archaeological, historical, artistic or scientific value, which are not protected by any of the Central or State statutes. East Godavari District Chapter of petitioner through its Convenor approached this Court alleging that amongst other areas of heritage, the Chapter identified the preservation of Brahma Samaj Mandir at Kakinada. As part of social, cultural and religious renaissance, which swept through the country, Sri Raja Ram Mohan Roy of Bengal had started the Brahma Samaj Movement and later Kandukuri Veeresalingam Pantulu of Rajahmundry, who was one of the towering personalities in the State, took active part and initiative to spread the teachings of Brahma Samaj in Andhra Pradesh. In the year 1927, late Maharaja of Pithapuram became an ardent sympathiser of Brahma Samaj movement and constructed a unique building called 'Brahmapasana Mandir' in Raja Ram Mohan Roy road, Kakinada. The building is constructed in a unique architectural style and has considerable historical value. Petitioners had in the writ petition admitted that neither the provisions of the Ancient Monuments Preservation Act, 1904 (Central Act No.7 of 1904) nor the provisions of the Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960, do apply to the building in question, and as such, building does not have any statutory protection afforded by Central or State Acts, but have tried to build up a case on the basis of simple architectural beauty of the building since it was constructed to propagate Brahma Samaj by the Maharaja of Pithapuram, therefore the building must be preserved as national heritage building. It is alleged that respondent No.2 and other heirs of late Maharaja are trying to take possession of the building and sell the same for construction of Five-Star hotel and carry on other gainful activities, which destroy the building and appurtenant structures. In this background, petitioners had prayed that Commission of Inquiry be ordered to be constituted for the purpose of conducting an enquiry into the true character and nature of 'Brahmopasana Mandir' and on receipt of the report of the said Commission of Inquiry, direction be issued for preservation and conservation of the building.

Though the writ petition has been pending for quite some time and has been dismissed on an earlier occasion, but subsequently restored, no respondent had bothered to file counter-affidavit. Petition is taken up for hearing. Learned counsel for petitioners rightly submitted before us that there is no statute as such, which might enable the petitioners to take assistance of any statute for protection of the building as ancient monument and says that since the State Government is taking care of the building and maintaining it, therefore direction must be issued to the State Government to keep it preserved. Only reliance is placed on Article 49 of the Constitution of India stating that it is the directive principle of the State Government to protect monuments and places and objects of national importance and since the building in question is a monument of national importance, therefore it is duty of the State Government to preserve it as monument of national importance.

Article 49 of the Constitution of India applies only to such of those monuments, places or objects of artistic or historical interests, which are declared as such under the law made by the Parliament to be of national importance. Neither the State Act nor the Central Act declares the building in question to be of national importance. Statutory protection as such is not applicable in the absence of which it is not permissible for us to issue any direction as prayed for. Maybe the petitioners' object may be laudable, but we cannot issue directions as prayed in the writ petition merely because the petitioners want such directions to be issued for appointment of a Commission of Inquiry. In case State Government is maintaining the building/property, it is for the petitioners to approach the State Government, but in the absence of any statute or statutory protection, none of the reliefs prayed for in the writ petition can be allowed, and thus we proceed to dismiss the writ petition as having no substance.

Writ Petition is accordingly dismissed.

DEVINDER GUPTA, C.J.

M.NARAYANA REDDY, J

24-01-2005

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SECTION OFFICER

To

- 1. The Chief Secretary to Govt., General Admn. Department, Secretariat, Hyderabad.
- 2. 2CCs to Govt. Pleader for General Administration,
High Court buildings, Hyderabad (OUT)
- 3. .2CD copies